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DANIEL GIOSSO, JAMES GIOSSO, AND  
RICHARD GIOSSO, TRUSTEES OF THE  
GIOSSO CHILDREN'S TRUST, MIKE  
O'NEILL AND SONS, A CALIFORNIA  
GENERAL PARTNERSHIP

UNITED STATES DISTRICT COURT  
NORTHRN DISTRICT OF CALIFORNIA

DANIEL GIOSSO, JAMES GIOSSO,  
AND RICHARD GIOSSO,  
TRUSTEES OF THE GIOSSO  
CHILDREN'S TRUST; MIKE  
O'NEILL AND SONS, A  
CALIFORNIA GENERAL  
PARTNERSHIP

Plaintiffs,

v.

CITY & COUNTY OF SAN  
FRANCISCO, a municipal entity, and  
DOES 1 through 100, inclusive.

Defendants.

Case No.:

**COMPLAINT FOR  
INJUNCTIVE AND EQUITABLE  
RELIEF**

COME NOW plaintiffs DANIEL GIOSSO, JAMES GIOSSO, and  
RICHARD GIOSSO, TRUSTEES OF THE GIOSSO CHILDREN'S TRUST, and

**COMPLAINT FOR INJUNCTIVE AND EQUITABLE RELIEF**

1 MIKE O'NEILL AND SONS, A CALIFORNIA GENERAL PARTNERSHIP  
2 (hereafter "Plaintiffs"), who allege as and for a cause of action, as follows:  
3

4 **INTRODUCTION**

5 1. San Francisco's Tenderloin neighborhood faces a desperate crisis.

6 2. The Tenderloin is a culturally diverse community comprised of  
7 seniors, persons with disabilities, people of color, immigrants (documented and  
8 undocumented), individuals with low incomes, LGBTQ people, and families with  
9 children. All of its residents—housed and unhoused—are being put at risk by the  
10 policies, actions, and inaction of the City and County of San Francisco.  
11

12 3. Even before the onset of the COVID-19 pandemic, the de facto policy  
13 of the City and County of San Francisco to use the Tenderloin community as a  
14 containment zone had resulted in a dramatic decline in the livability and safety of  
15 the neighborhood. The deplorable conditions tolerated by the City in the  
16 Tenderloin are not permitted in other neighborhoods in San Francisco. This is a  
17 matter of fundamental fairness; what is a city-wide problem should not be allowed  
18 to weigh disproportionately on a low-income working-class neighborhood. San  
19 Francisco should be prohibited from abandoning a single neighborhood, in an  
20 apparent effort to spare other neighborhoods the burdens that confront the city at-  
21 large.  
22

23 4. The Tenderloin, always a community of tolerance and compassion, is  
24 now blighted; its sidewalks are unsanitary, unsafe, and often impassable. Open-air  
25

26 **COMPLAINT FOR INJUNCTIVE AND EQUITABLE RELIEF**  
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28

1 drug sales and other criminal activity, plus crowds of drug users and sidewalk-  
2 blocking tents, pervade and threaten the health and lives of all of the Tenderloin's  
3 residents. What has long been suffered in the Tenderloin has become insufferable.  
4 The conditions now prevailing in the Tenderloin constitute a violation of the  
5 fundamental civil rights of those residing and working there.  
6

7  
8 5. Small business owners, who reflect the cultural diversity of the  
9 neighborhood, face multiple challenges. Their economic viability is threatened  
10 by generic COVID-19 business disruption, but they must also cope with an  
11 existential risk to their future, as customers elect to patronize establishments where  
12 sidewalk conditions do not impose physical barriers to safe access. The same is  
13 true of providers of rental housing in the neighborhood.  
14

15  
16 6. The pandemic has ominously exacerbated dangers and harms to those  
17 who live, work, and go to school in the Tenderloin, and it threatens to do so for  
18 years to come as successive waves of infection bring further death and despair.  
19

20 7. Plaintiffs make the factual allegations and assert the legal claims  
21 herein in an effort to compel the City and County of San Francisco to comply with  
22 the law. Plaintiffs seek ultimately not to assign blame, but to obtain legally  
23 obligatory solutions.  
24

## 25 **II. JURISDICTION AND VENUE**

26  
27 8. Plaintiffs assert the claims herein pursuant to 42 U.S.C. § 1983, and  
28 the Fifth and Fourteenth Amendments of the United States Constitution. This  
**COMPLAINT FOR INJUNCTIVE AND EQUITABLE RELIEF**

1 Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1367, 2201 & 2202.

2 9. This Court has supplemental jurisdiction over plaintiffs' state law  
3  
4 claims pursuant to 28 U.S.C. § 1367, as they arise from the same case or  
5 controversy as plaintiffs' federal claims.

6 10. Plaintiffs seek only equitable and injunctive relief for their state law  
7  
8 claims. Accordingly, plaintiffs need not submit a compensation claim with any  
9 local public entity pursuant to the California Tort Claims Act set forth at California  
10 Government Code §§ 810 et seq.<sup>1</sup>

11  
12 11. The acts and omissions complained of herein occurred in the Northern  
13 District of California. Accordingly, pursuant to 28 U.S.C. § 1391, venue is proper  
14 in this Judicial District.

### 15 16 **III. INTRADISTRICT ASSIGNMENT**

17 12. A substantial part of the events or omissions that give rise to the claims  
18 asserted herein occurred in the City and County of San Francisco, and a substantial  
19 part of the property that is the subject of this action is situated in the City and  
20 County of San Francisco.

### 21 22 **IV. PARTIES**

#### 23 24 **A. Plaintiffs**

25 13. Plaintiffs DANIEL GIOSSO, JAMES GIOSSO, AND RICHARD  
26

27  
28 <sup>1</sup> See *Owest Commc'ns Corp. v. City of Berkeley*, 146 F. Supp. 2d 1081, 1090-91 (N.D. Cal. 2001).

1 GIOSSO are the trustees of the GIOSSO CHILDREN'S TRUST and are the legal  
2 owners of the mixed-use building located at 725-727 Van Ness Avenue, San  
3 Francisco, California (hereafter "Giosso Building"). The Giosso Building has  
4 ground-floor commercial space and 31 residential rental units. The Giosso  
5 Building is located on the western edge of the Tenderloin on the 700 block of Van  
6 Ness Avenue (hereafter "The Block"), which is the block bounded on the west and  
7 east by Van Ness and Franklin Streets, and on the north and south by Turk and  
8 Eddy Streets. The Block is further divided approximately in half from the west and  
9 east by a one-block long street called Larch Street (hereafter "The Alley"). The  
10 Alley is about 2 ½ blocks away from City Hall in San Francisco.  
11

12 14. Plaintiff MIKE O'NEILL AND SONS is a California general  
13 partnership and is the owner of two different apartment buildings located on The  
14 Block. One is 828 Franklin Street, and the other is 880 Franklin Street. These two  
15 apartment buildings (hereafter "O'Neill Buildings") are collectively comprised of  
16 174 residential rental units.  
17

18 **B. Defendant**  
19

20 15. Defendant CITY AND COUNTY OF SAN FRANCISCO  
21 ("Defendant" or the "City") is a municipal entity existing under the laws of the  
22 State of California, with the capacity to sue and be sued.  
23

24 ///

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26 **COMPLAINT FOR INJUNCTIVE AND EQUITABLE RELIEF**  
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## V. FACTUAL ALLEGATIONS

### A. History of the Tenderloin Neighborhood

16. The “Tenderloin” is an approximately 50-city block neighborhood in downtown San Francisco that has been known by that name for more than a century. Although not all authorities agree on the Tenderloin’s precise metes and bounds, many consider it to be a trapezoid-shaped region which is roughly bordered on the west by Van Ness Avenue, on the north by Post Street, on the east by Mason Street, and on the south by Market Street.

17. For most of its existence, the Tenderloin has attracted residents from the working-class and lower income segments of San Francisco society. The socioeconomic fortunes of the Tenderloin have waxed and waned significantly over the past 60 years.

18. Specifically, the distinctive character of the Tenderloin experienced a sharp decline in the 1960s. By 1971, the neighborhood was described by The New York Times as the “porn capital of the USA.”<sup>2</sup> Prostitution and illegal drug trafficking were open and notorious, and housing conditions deteriorated.<sup>3</sup>

19. A decade later, in the early to mid-1980s, the Tenderloin enjoyed a

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<sup>2</sup> Randy Shaw, After 40 Years, the Tenderloin at Another Crossroads, San Francisco Chronicle (Feb. 23, 2020), <https://www.sfchronicle.com/opinion/article/After-40-years-the-Tenderloin-at-another-15066015.php> (referring to William Murray, Porn Capital of America: San Francisco, New York Times Magazine (Jan. 3, 1971), at 8-9).

<sup>3</sup> See generally Randy Shaw, *The Tenderloin: Sex, Crime, and Resistance in the Heart of San Francisco* 135-56 (2015) (Chapter 6: 1967-1977, The Tenderloin Hits Bottom).

1 brief revival. Through the hard work, dedication, and inspiration provided by  
 2 politicians and community leaders including then-Mayor Dianne Feinstein; the  
 3 Reverend Cecil Williams of Glide Memorial United Methodist Church; and the late  
 4 owner of the Cadillac Hotel, Leroy Looper, the Tenderloin attracted substantial  
 5 fresh investment, particularly in its restaurants and other small businesses.<sup>4</sup> New  
 6 zoning regulations were enacted that protected the low-income character of the  
 7 neighborhood.<sup>5</sup>

10 20. Unfortunately, the Tenderloin's economic resurgence did not last. By  
 11 the late-1980s, several factors, including a cut in federal funding, an economic  
 12 slump, and a lack of police department support, triggered another two-decade  
 13 decline.<sup>6</sup>

16 21. For a few years beginning in 2011, under the leadership of the late  
 17 Mayor Ed Lee, the Tenderloin again experienced a revitalization. New housing and  
 18 restaurants opened, neighborhood parks were renovated, and the Tenderloin  
 19 Museum was commissioned.<sup>7</sup> But, again, the Tenderloin's prosperity did not last.

#### 21 **B. Current State of the Tenderloin**

22 22. At present, more than 20,000 people are permanent residents of the  
 23 Tenderloin, including 3,000 children.<sup>8</sup> Indeed, the Tenderloin has the highest per  
 24

26 <sup>4</sup> Shaw, *S.F. Chronicle*, *supra* n.2.

27 <sup>5</sup> *Id.*

28 <sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Randy Shaw, *SF Turning Tenderloin into a Ghetto, BeyondChron*



capita concentration of children of any neighborhood in San Francisco.<sup>9</sup> The Tenderloin's residents consist primarily of low-income and working class individuals, senior citizens, disabled people, and families with children.<sup>10</sup>

23. By 2019, the condition of the Tenderloin sank to a new low. The homeless population, which has long been present in the Tenderloin, swelled. According to a 2019 study conducted by Applied Survey Research, the homeless count in San Francisco increased by almost 20% over the four years from 2015 to 2019, with most of that growth occurring over the last two years.<sup>11</sup>

24. The recent influx of homeless people into the Tenderloin has created a variety of problems for all stakeholders—permanent residents, providers of rental housing, businesses, schools, the police, and the homeless population itself (an estimated 39% of whom suffer from mental illness<sup>12</sup>).

25. Open-air drug transactions are routinely tolerated in the Tenderloin. The easy availability of illegal drugs attracts users and intensifies the homelessness problem. Some 42% of the homeless population are estimated to suffer from

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(Apr. 7, 2020), <http://beyondchron.org/sf-turning-tenderloin-into-a-ghetto/>.

<sup>9</sup> Carrie Sisto, *Tenderloin Merchants Form New Association to Address Issues with Neighborhood's Alleys*, Hoodline (Nov. 13, 2019), <https://hoodline.com/2019/11/tenderloin-merchants-form-new-association-to-address-issues-with-neighborhood-s-alleys>.

<sup>10</sup> Shaw, *BeyondChron*, *supra* n.8.

<sup>11</sup> Applied Survey Research, San Francisco Homeless Count & Survey 2019 Executive Summary, San Francisco Department of Homelessness & Supportive Housing (2019), [http://hsh.sfgov.org/wpcontent/uploads/ExecutiveSummary\\_SanFrancisco2019.pdf](http://hsh.sfgov.org/wpcontent/uploads/ExecutiveSummary_SanFrancisco2019.pdf).

<sup>12</sup> *Id.*



1 alcohol or drug addiction.<sup>13</sup>

2       26. Sidewalks in the Tenderloin are now packed with tents, some of which  
3 contain as many as six individuals. Since the latter part of 2019, a sizeable number  
4 of homeless persons have created an unwanted tent encampment in The Alley. It  
5 has grown over time and gotten particularly bad in the last few months. The people  
6 in the encampment have taken over both sides of the street, erecting and placing  
7 tents and other obstructions on the entire length of The Alley. Recent photographs  
8 depicting various portions of the encampment are attached hereto as Exhibit "A."  
9 There are also tents on portions of the sidewalks surrounding The Block.

10       27. According to a count conducted by Urban Alchemy (a non-profit  
11 organization that provides litter reduction services in the Tenderloin and adjacent  
12 neighborhoods of San Francisco to ensure safe, clean, and accessible sidewalks and  
13 rights-of-way), the number of tents and makeshift shelters on Tenderloin sidewalks  
14 grew from 158 on March 3, 2020, to 391 on May 1, 2020. A chart illustrating the  
15 increase in the number of those tents and shelters on Tenderloin sidewalks from  
16 December 10, 2019, to May 1, 2020, is attached hereto as Exhibit "B."

17       28. Those tents, such as those presently in The Alley, block the sidewalks  
18 in the Tenderloin, impeding pedestrians' travel. They also serve as cover for drug  
19 dealers and others conducting nefarious activities.<sup>14</sup> However, on plaintiffs'

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27 <sup>13</sup> *Id.*

28 <sup>14</sup> Phil Matier, *SF Homeless Tents, Once Seen as Problem, Now Seen as Path to Coronavirus Social Distancing*, San Francisco Chronicle (Apr. 12, 2020),

1 information and belief, the San Francisco Police Department has been directed not  
 2 to remove or disturb those tents, despite the fact that they block the sidewalks and  
 3 shield criminals and despite the health risks that they pose to permanent residents,  
 4 business owners, pedestrians, and homeless people themselves.<sup>15</sup>

6 29. According to Randy Shaw, executive director of the Tenderloin  
 7 Housing Clinic,<sup>16</sup> “The Tenderloin has become a horror show. Feces, drug dealers  
 8 and users, graffiti, tents and crowds on sidewalks dominate the landscape.”<sup>17</sup>

10 30. The crisis in the Tenderloin presents an immediate and dire public  
 11 health problem.

13 31. The Tenderloin’s crisis also presents an environmental problem, as the  
 14 U.S. Environmental Protection Agency has recognized. In a letter to Governor  
 15 Gavin Newsom dated September 26, 2019, EPA Administrator Andrew R. Wheeler  
 16 wrote:

18 The EPA is aware of the growing homelessness crisis  
 19 developing in major California cities, including Los Angeles  
 20 and San Francisco, and the impact of this crisis on the environ-  
 21 ment. Indeed, press reports indicate that “piles of human  
 22 feces” on sidewalks and streets in these cities are becoming all  
 too common. The EPA is concerned about the potential water

23 [https://www.sfchronicle.com/bayarea/philmatier/article/SF-homeless-tents-once-](https://www.sfchronicle.com/bayarea/philmatier/article/SF-homeless-tents-once-seen-as-problem-now-seen-15193812.php)  
 24 [seen-as-problem-now-seen-15193812.php.](https://www.sfchronicle.com/bayarea/philmatier/article/SF-homeless-tents-once-seen-as-problem-now-seen-15193812.php)

25 <sup>15</sup> Shaw, *BeyondChron*, *supra* n.8.

26 <sup>16</sup> Mr. Shaw also co-founded and serves on the Board of Directors of Uptown  
 27 Tenderloin, Inc., a nonprofit organization that in 2009 spearheaded the creation of  
 the national Uptown Tenderloin Historic District. Uptown Tenderloin, Inc. was the  
 driving force behind the Tenderloin Museum, which opened in 2015. Mr. Shaw is  
 the editor of *BeyondChron.org*.

28 <sup>17</sup> Shaw, *BeyondChron*, *supra* n.8.

quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters. San Francisco, Los Angeles and the state do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis.<sup>18</sup>

32. The plight of the Tenderloin is aggravated by the NIMBY<sup>19</sup> attitude and behavior exhibited by many in San Francisco. That is, as the streets of other San Francisco neighborhoods improve, the condition of the Tenderloin deteriorates. As San Francisco Chronicle columnist Heather Knight recently observed, “[t]hough city officials would never admit it, they’ve long treated the low-income neighborhood [of the Tenderloin] as a containment zone, tolerating everything from blatant drug dealing to open-air injection drug use to filthy sidewalks that wouldn’t stand in wealthier parts of town.”<sup>20</sup> Randy Shaw similarly asserted, “in 2020, our ‘progressive’ city still maintains a double standard that bars activities in gentrified neighborhoods that it allows in the Tenderloin.”<sup>21</sup>

### **C. Impact on Plaintiffs**

33. Plaintiffs are providers of rental housing, and the occupants in the Giosso Building and the O’Neill Buildings are residential tenants who live in the

<sup>18</sup> Letter from Andrew R. Wheeler, Administrator, U.S. Environmental Protection Agency, to Gavin C. Newsom, Governor, State of California (Sep. 26, 2019), [https://www.epa.gov/sites/production/files/2019-09/documents/9.26.19\\_letter-epa.pdf](https://www.epa.gov/sites/production/files/2019-09/documents/9.26.19_letter-epa.pdf) (footnotes omitted).

<sup>19</sup> “Not In My Back Yard”

<sup>20</sup> Heather Knight, “*The Problem Is Getting Worse*”: SF’s Troubled Tenderloin Buckles under Weight of Coronavirus, San Francisco Chronicle (Apr. 17, 2020), <https://www.sfchronicle.com/bayarea/heatherknight/article/The-problem-is-getting-worse-SF-s-15206953.php>.

<sup>21</sup> Shaw, *S.F. Chronicle*, *supra* n.2.

1 neighborhood. Plaintiffs and their managers and tenants, along with other persons  
2 who reside on and/or work on The Block, have suffered from the deterioration of  
3 their community. Tent-blocked sidewalks in The Alley and around The Block,  
4 groups of addicts injecting themselves, the odors of smoked crystal  
5 methamphetamine and human waste, open-air drug dealing, a makeshift bicycle  
6 “chop shop,” assaults, and noise at all hours of the day and night immediately  
7 outside the Giosso Building and the O’Neill Buildings cause residents to fear for  
8 their safety; many are afraid to venture outside their building, particularly at night.  
9

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11  
12 34. The tent encampment in The Alley, and the criminal, anti-social,  
13 and/or disruptive activities which take place therein on a regular, if not daily, basis  
14 are a nuisance by any conceivable understanding of that term. Fights have erupted  
15 between members of the encampment wielding steel poles. A woman was dragged  
16 around by her neck. Members of the encampment have assaulted and harassed  
17 tenants who live on The Block. They urinate and defecate in The Alley.<sup>22</sup> They  
18 make unbearable noise at all hours of the day and evening. They do drugs out in  
19 the open. They have tried to break into plaintiffs’ buildings and rental units. They  
20 steal packages/deliveries left for the residents. There is a makeshift bicycle “chop  
21 shop” present as well. A contractor recently noted that one member of the  
22 encampment had a firearm. On plaintiff’s information and belief, there was a drug  
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27

28 <sup>22</sup> On plaintiffs’ information and belief, the City only encouraged the encampment to grow by installing a portable toilet in The Alley earlier this year.

1 overdose on January 25, 2020; on plaintiffs' further information and belief, a  
2 stabbing death occurred in The Alley in February, 2020. The tenants in the Giosso  
3 Building and the O'Neill Buildings feel like prisoners in their own homes. They do  
4 not feel safe living on the block, and do not feel safe exiting/entering their buildings  
5 for any reason (e.g., grocery shopping). Numerous vacancies now exist in  
6 plaintiffs' three buildings because of the nuisance. Things have gotten so bad that  
7 tenants are now vacating these buildings and are specifically citing the encampment  
8 in The Alley as the reason. For example, one tenant vacated earlier this year and  
9 informed the manager of the Giosso Building that his reason for moving was:

13 . . . . ultimately that I felt unsafe at the property due to the people  
14 that started to congregate around the building and on Larch St  
15 during my tenancy. Over my time at the building (August 2018-  
16 January 2020) the number of what I would consider to be violent  
17 homeless people living in that area grew exponentially. Barely a  
18 week went by where I didn't call either the non-emergency police  
line or 911 because people were fighting on Larch St at all hours  
of the day and night . . . .

19 And, because the nuisance in The Alley is unavoidable and so obvious to anyone  
20 who would enter any of plaintiffs' three buildings to view vacant units, plaintiffs  
21 cannot re-rent these vacant units.

23 35. Nearby businesses in the Tenderloin have likewise suffered as a result  
24 of the neighborhood's decline, including crime and vandalism such as broken shop  
25 windows.  
26

27 36. Since the start of the COVID-19 pandemic, many, if not most or all, of  
28

1 the people in the encampment in The Alley do not adhere to social distancing rules  
2 for the pandemic; they congregate in large groups in close proximity, without  
3 masks; they do not make way for other people who live and work on The Block  
4 who are trying to use the sidewalks; they sometimes display hostile and threatening  
5 behavior. Numerous residents in plaintiffs' three buildings have windows which  
6 are directly above, and not far from, the tents and people who form the encampment  
7 in The Alley.  
8

9  
10 37. Plaintiffs' managers have called and/or written the City and the San  
11 Francisco Police Department, demanding the removal of the encampment, but the  
12 City and its police department have turned a blind eye to the problem, done nothing  
13 in response to it, and have allowed the continuation of a nuisance which threatens  
14 the health and safety of others.  
15  
16

17 **D. Effect of the COVID-19 Pandemic**

18  
19 38. On March 16, 2020, in response to the COVID-19 pandemic, Mayor  
20 London Breed directed San Francisco businesses to close and issued a citywide  
21 shelter-in-place order.<sup>23</sup> The homeless population in the Tenderloin, however, has  
22 no place in which to shelter. Homeless people are exempted from social distancing  
23 conventions. Plaintiffs are deeply concerned that the homeless population in The  
24

25 <sup>23</sup> Russell Berman, *The City That Has Flattened the Coronavirus Curve*, The  
26 Atlantic (Apr. 12, 2020),  
27 <https://www.theatlantic.com/politics/archive/2020/04/coronavirus-san-francisco-london-breed/609808/>; *see also* City & County of San Francisco, Dept. of Public  
28 Health, Order of the Health Officer No. C19-07 (Mar. 16, 2020),  
<https://www.sfdph.org/dph/alerts/files/HealthOrderC19-07-%20Shelter-in-Place.pdf>.



1 Alley and around The Block—who have likely never been tested and who lack the  
2 resources to comply with the public health guidance of sheltering in place,  
3 practicing social distancing, washing hands, and wearing face coverings—may have  
4 COVID-19, posing a greater risk to the residents in their buildings and to their  
5 managers and inviting a general spread of the virus.  
6

7  
8 39. Despite the high risk of infection and other dangers posed to residents  
9 in the Tenderloin and beyond, the City has yet to implement wide-scale testing for  
10 people living on the streets.  
11

12 40. Studies show that a primary cause of homelessness is loss of  
13 employment.<sup>24</sup> The pandemic has caused a devastating increase in unemployment,  
14 in San Francisco and throughout the state and country.<sup>25</sup> The homeless population  
15 in the Tenderloin has grown since the onset of the pandemic, and it will likely  
16 continue to grow. On plaintiff's information and belief, the City reduced the  
17 number of persons allowed to sleep in City shelters out of concern for the  
18 coronavirus, but afforded the persons it displaced no other shelter opportunity,  
19 thereby forcing them to turn to living on the streets and in tents, and adding to the  
20 homeless population which was already existent in the Tenderloin when the  
21 pandemic started.  
22  
23  
24  
25

26 <sup>24</sup> Applied Survey Research, *supra* n.11.

27 <sup>25</sup> Adam Beam, *California's Unemployment Rate Soars, But Worst Yet to Come*,  
28 NBC Bay Area (Apr. 17, 2020),  
<https://www.nbcbayarea.com/news/california/california-unemployment-rate-jumped-to-5-3-in-march/2274716/>.



41. The explosive growth in the size of the Tenderloin's homeless population has likewise harmed its permanent residents. Individuals and families living in SROs are terrified to go outside. As Heather Knight explained, "[m]any families live in tiny single room occupancy hotels, sharing communal kitchens and bathrooms. But to get outside for fresh air or to run essential errands, they're faced with an impossible choice: push through crowded sidewalks, social distancing be damned, or walk into traffic to get around the throngs."<sup>26</sup>

42. On April 20, 2020, District 6 Supervisor Matt Haney transmitted a letter to Mayor Breed and other City officials regarding the Tenderloin's crisis.<sup>27</sup> In his detailed letter, Supervisor Haney explained (among many other things) how Tenderloin residents are "uniquely vulnerable to the spread of COVID-19" and how the proliferation of tents on the sidewalks of the Tenderloin creates "extreme health hazards for everyone."<sup>28</sup> Supervisor Haney closed his letter with a demand for "a specific, targeted intervention strategy from the City" to "slow the spread of the virus, save lives, and protect everyone in our city."<sup>29</sup>

43. The City's acts and omissions, whether intentional or negligent, that allow the Tenderloin to serve as the City's repository for its homeless population (as Supervisor Haney outlines in his letter and as plaintiffs have detailed above)

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<sup>26</sup> Knight, *supra* n.20.

<sup>27</sup> Letter from Matt Haney, Supervisor, San Francisco District 6, to London Breed, Mayor, City of San Francisco, *et al.* (Apr. 20, 2020).

<sup>28</sup> *Id.* at 1.

<sup>29</sup> *Id.* at 4.

1 have created dire consequences for the Tenderloin's residents and businesses,  
 2 including plaintiffs'. The City's acts and omissions threaten plaintiffs with the  
 3 following specific consequences: (a) an increased risk of infection of COVID-19;  
 4 (b) interference with their property rights; (c) loss of business and other  
 5 opportunities; (d) interference with their California constitutional right to pursue  
 6 happiness; (e) interference with their federal due process rights; and (f) interference  
 7 with their federal equal protection rights.  
 8  
 9

10 44. Defendant is legally obligated to act quickly to protect plaintiffs' legal  
 11 rights (as articulated in their claims set forth below) as well as the health and lives  
 12 of plaintiffs, their managers, and their tenants. The Tenderloin's long role as the  
 13 City's containment zone must cease.  
 14  
 15

## 16 **VI. CLAIMS FOR RELIEF**

### 17 **FIRST CLAIM FOR RELIEF**

#### 18 **Violation of Due Process**

#### 19 **42 U.S.C. § 1983; U.S. Const. Amend. V/XIV**

#### 20 **(All Plaintiffs against Defendant)**

21 45. Plaintiffs re-allege and incorporate herein by this reference each and  
 22 every allegation set forth in Paragraphs 1 through 44 of this Complaint as though  
 23 set forth fully herein.  
 24  
 25

26 46. Defendant, by abdicating its duties under the law to ensure safe and  
 27 secure living conditions in the Tenderloin, has denied residents on The Block and in  
 28

## **COMPLAINT FOR INJUNCTIVE AND EQUITABLE RELIEF**

1 plaintiffs' buildings due process of law as guaranteed by the Fifth and Fourteenth  
 2 Amendments of the United States Constitution. The squalid sidewalk conditions,  
 3 exacerbated profoundly by the threat of infection, have denied these residents their  
 4 unimpeded liberty and use of their property, and have allowed conditions to fester  
 5 that threaten residents' health and lives.

6  
 7  
 8 47. Upon plaintiffs' information and belief, this was done with deliberate  
 9 intent and/or reckless disregard of plaintiffs' rights. Plaintiffs seek injunctive relief  
 10 and the cost of attorneys' fees in bringing this action.  
 11

## 12 **SECOND CLAIM FOR RELIEF**

### 13 **Violation of Equal Protection**

#### 14 **42 U.S.C. § 1983; U.S. Const. Amend. V/XIV**

#### 15 **(All Plaintiffs against Defendant)**

16  
 17 48. Plaintiffs re-allege and incorporate herein by this reference each and  
 18 every allegation set forth in Paragraphs 1 through 47 of this Complaint as though  
 19 set forth fully herein.  
 20

21 49. Defendant, by enforcing the law in some areas and declining to  
 22 enforce the law in others, has arbitrarily determined where homeless encampments  
 23 may or may not be located and what communities should be affected, without  
 24 following its own procedures and in violation of both state and federal law. This  
 25 has placed a disproportionate burden on some persons, communities, and  
 26 businesses over others.  
 27  
 28

## **COMPLAINT FOR INJUNCTIVE AND EQUITABLE RELIEF**

1           50. Upon plaintiffs' information and belief, this was done with deliberate  
2 intent and/or reckless disregard of plaintiffs' rights. Plaintiffs seek injunctive relief  
3 and the cost of attorneys' fees in bringing this action.  
4

5                                   **THIRD CLAIM FOR RELIEF**

6                           **Violation of Due Process Clause, State-Created Danger Doctrine**

7                                   **42 U.S.C. § 1983; U.S. Const. Amend. XIV**

8                                   **(All Plaintiffs against Defendant)**

9  
10           51. Plaintiffs re-allege and incorporate herein by this reference each and  
11 every allegation set forth in Paragraphs 1 through 50 of this Complaint as though  
12 set forth fully herein.  
13

14           52. By the acts and omissions described above, defendant has  
15 affirmatively created or increased the risk that plaintiffs, their managers, and their  
16 tenants would be exposed to dangerous conditions, which placed plaintiffs, their  
17 managers, and their tenants specifically at risk, and these persons were and have  
18 been harmed as a result.  
19  
20

21           53. Defendant knew or should have known that its acts or omissions  
22 specifically endangered plaintiffs, their managers, and their tenants, and defendant  
23 was deliberately indifferent thereto.  
24

25 ///

26 ///

27 ///

28                                   **COMPLAINT FOR INJUNCTIVE AND EQUITABLE RELIEF**

**FOURTH CLAIM FOR RELIEF**

**Uncompensated Taking**

**42.U.S.C. § 1983; U.S. Const. Amend. V/XIV**

**(All Plaintiffs against Defendant)**

54. Plaintiffs re-allege and incorporate herein by this reference each and every allegation set forth in Paragraphs 1 through 53 of this Complaint as though set forth fully herein.

55. The Fifth Amendment mandates, in relevant part, that “private property [shall not] be taken for public use, without just compensation.” The Fifth Amendment is applied to the states through the Fourteenth Amendment.<sup>30</sup> The actions by the City, as described in detail herein, have limited, damaged, and/or burdened the property owners (including, but not limited to, plaintiffs) so substantially that they rise to the level of a regulatory taking, yet no compensation has been provided.

56. Upon information and belief, this was done with deliberate intent and/or reckless disregard of plaintiffs’ rights. Plaintiffs seek injunctive relief and the cost of attorneys’ fees in bringing this action.

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<sup>30</sup> *Chicago, B. & Q.R. Co. v. City of Chicago*, 166 U.S. 226, 241, 17 S.Ct. 581, 586 (1897).

**FIFTH CLAIM FOR RELIEF**

**Municipal Liability for Unconstitutional Custom or Policy**

**42 U.S.C. § 1983**

**(All Plaintiffs against Defendant)**

57. Plaintiffs re-allege and incorporate herein by this reference each and every allegation set forth in Paragraphs 1 through 56 of this Complaint as though set forth fully herein.

58. Plaintiffs are informed, believe and allege that, at all times herein mentioned, defendant and its agents, with deliberate indifference, and conscious and reckless disregard to the safety, security, and constitutional and statutory rights of plaintiffs, engaged in the unconstitutional conduct and omissions set forth above, all pursuant to policy, procedure, or customs held by the City.

59. The actions and inactions of the City were known or should have been known to the policy makers responsible for that agency and occurred with deliberate indifference to the constitutional violations set forth above, and/or to the strong likelihood that constitutional rights would be violated as a result of its customs and/or policies.

60. Plaintiffs seek injunctive relief, and the cost of attorneys' fees in bringing this action.

///

///

**COMPLAINT FOR INJUNCTIVE AND EQUITABLE RELIEF**

1 **SIXTH CLAIM FOR RELIEF**

2 **Negligence**

3 **(All Plaintiffs against Defendant)**

4  
5 61. Plaintiffs re-allege and incorporate herein by this reference each and  
6 every allegation set forth in Paragraphs 1 through 60 of this Complaint as though  
7 set forth fully herein.

8  
9 62. Defendant, by and through its agents and employees, has the sole right  
10 and responsibility to control, maintain, and keep safe and clean the public and  
11 public-right-of-way areas in San Francisco, including parks, sidewalks, streets, and  
12 public buildings, and to make and enforce laws assuring the public health and  
13 safety thereof for its citizens and their guests. Among other things, defendant has  
14 the duty to maintain these areas in a manner that does not unreasonably interfere  
15 with the free passage or use by plaintiffs, their managers, and their tenants and that  
16 addresses and alleviates conditions that are harmful to health or indecent or  
17 offensive to the senses, that create a fire hazard, or that permit crime to occur  
18 unabated including the illegal sale and/or use of controlled substances.

19  
20  
21  
22 63. As controlling law makes clear, “[t]he public is entitled to the free and  
23 unobstructed use of the entire streets and sidewalks. . . .”<sup>31</sup> Indeed, municipalities  
24 “have the duty to keep their communities’ streets open and available for movement  
25  
26  
27

28 <sup>31</sup> *Vanderhurst v. Tholcke*, 113 Cal. 147, 152 (1896).



1 of people and property, the primary purpose to which the streets are dedicated.”<sup>32</sup>

2 64. Defendant and its agents have breached their duty to San Francisco’s  
3 citizens, including and specifically to plaintiffs, their managers, and their tenants  
4 and each plaintiff has suffered as a result. The bases of this claim for relief include  
5 the conduct, acts, and omissions of individual responsible City officials, based on  
6 the theory of respondeat superior.  
7

8 65. Plaintiffs seek no monetary damages hereunder and submit this claim  
9 for only equitable and injunctive relief. Accordingly, the City is not entitled to any  
10 claim of immunity, pursuant to California Government Code § 814.  
11

## 12 SEVENTH CLAIM FOR RELIEF

### 13 Public Nuisance

### 14 Cal. Civ. Code §§ 3490 et seq.

### 15 (All Plaintiffs against Defendant)

16 66. Plaintiffs re-allege and incorporate herein by this reference each and  
17 every allegation set forth in Paragraphs 1 through 65 of this Complaint as though  
18 set forth fully herein.  
19

20 67. California has defined nuisance as:

21 [a]nything which is injurious to health, including, but not limited  
22 to, the illegal sale of controlled substances, or is indecent or  
23 offensive to the senses, or an obstruction to the free use of  
24 property, so as to interfere with the comfortable enjoyment of life  
25

26  
27 <sup>32</sup> *Schneider v. State of New Jersey, Town of Irvington*, 308 U.S. 147, 160, 60 S.  
28 Ct. 146, 150 (1939).

1 or property, or unlawfully obstructs the free passage or use, in the  
 2 customary manner, of any navigable lake, or river, bay, stream,  
 3 canal, or basin, or any public park, square, street, or highway, is a  
 nuisance.<sup>33</sup>

4 68. That statute “is an expression of the Legislature’s public policy against  
 5 public nuisances, and it is plainly aimed at protecting the public from the hazards  
 6 created by public nuisances.”<sup>34</sup> In addition to health and safety hazards, “[a]  
 7 reduction in property values caused by activities on a neighboring piece of land,  
 8 and an assault on the senses by noise, dust, and odors, are just the kinds of  
 9 harm that common law suits to abate a nuisance are designed to redress.”<sup>35</sup> A  
 10 public nuisance is the substantial and unreasonable interference with a public  
 11 right.<sup>36</sup>

12 69. As described above, the City, by its failure to maintain the public  
 13 property under its control and to enforce the laws requiring the same, is  
 14 perpetuating and facilitating a public nuisance.

15 70. All plaintiffs, and their managers and tenants, have experienced a  
 16 substantial and unreasonable interference with the enjoyment of their property,  
 17 whether that be a building owned or a room rented, and with their right of free  
 18 passage and use; each has suffered and continues to be threatened with respect to

19  
 20  
 21  
 22  
 23  
 24  
 25 <sup>33</sup> California Civil Code § 3479.

26 <sup>34</sup> *People v. ConAgra Grocery Prods. Co.*, 17 Cal. App. 5th 51, 136 (2017).

27 <sup>35</sup> *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Eng’rs*, 101 F.3d  
 503, 505 (7th Cir. 1996).

28 <sup>36</sup> *San Diego Gas & Elec. Co. v. Superior Court*, 13 Cal. 4th 893, 938 (1996).

1 his or her health and welfare, by reason of the constant threat of disease and the  
 2 experience of human waste, trash, tents, and an encampment outside their  
 3 properties and along and on the sidewalks and streets of The Alley and The Block.

5 71. Each plaintiff has been damaged in his or her own right, in a manner  
 6 specially injurious to himself or herself. No plaintiff consented to defendant's  
 7 conduct.  
 8

## 9 **EIGHTH CLAIM FOR RELIEF**

### 10 **Private Nuisance**

### 11 **Cal. Civ. Code §§ 3501 et seq.**

### 12 **(All Plaintiffs against Defendant)**

14 72. Plaintiffs re-allege and incorporate herein by this reference each and  
 15 every allegation set forth in Paragraphs 1 through 71 of this Complaint as though  
 16 set forth fully herein.  
 17

18 73. Each plaintiff co-owns the Giosso Building or the O'Neill Buildings.  
 19 By defendant's actions and inactions, each has created a condition or permitted a  
 20 condition to exist that is harmful to the health, is indecent and offensive to the  
 21 senses, obstructs the free passage and use of public parks, squares, streets, highway,  
 22 and sidewalks, permits unlawful sales of illicit narcotics, and constitutes a fire  
 23 hazard, as described herein.  
 24

26 74. Defendant's conduct has been and is intentional and unreasonable, or  
 27 unintentional but negligent or reckless. Alternatively, the condition permitted to  
 28

## **COMPLAINT FOR INJUNCTIVE AND EQUITABLE RELIEF**

1 exist was the result of abnormally dangerous activity that substantially interfered  
 2 with each plaintiff's use or enjoyment of his or her land (as well as the enjoyment  
 3 of the same land by his or her manager(s) and tenants), that would reasonably  
 4 annoy or disturb an ordinary person. No plaintiff consented to defendant's conduct;  
 5 each was harmed; defendant's conduct was a substantial factor in causing the harm;  
 6 and the seriousness of the harm outweighs any public benefit of such conduct  
 7 (which is none).  
 8

9  
 10 75. Plaintiffs seek no monetary damages hereunder and submit this claim  
 11 for only equitable and injunctive relief. Accordingly, the City is not entitled to any  
 12 claim of immunity, pursuant to California Government Code § 814.  
 13

#### 14 **NINTH CLAIM FOR RELIEF**

##### 15 **Violation of Mandatory Duty**

16 **Cal. Gov't Code § 815.6; Cal. Welf. & Inst. Code § 17000**

17 **(All Plaintiffs against Defendant)**

18  
 19 76. Plaintiffs re-allege and incorporate herein by this reference each and  
 20 every allegation set forth in Paragraphs 1 through 75 of this Complaint as  
 21 though set forth fully herein.  
 22

23  
 24 77. Defendant City is liable under California Government Code § 815.6  
 25 and common law negligence theory for violation of a statutorily mandated duty to  
 26 provide medical care for the indigent. California Welfare & Institutions Code §  
 27 17000 provides:  
 28

**COMPLAINT FOR INJUNCTIVE AND EQUITABLE RELIEF**

Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.

78. California Welfare & Institutions Code § 10000 clarifies and defines the purpose of these obligations as follows:

The purpose of this division is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all of the people of the state by providing appropriate aid and services to all of its needy and distressed. It is the legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life, and without discrimination on account of ancestry, marital status, political affiliation, or any characteristic listed or defined in Section 11135 of the Government Code. That aid shall be so administered and services so provided, to the extent not in conflict with federal law, as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society.

79. Sections 17000 and 10000 taken together mandate that “medical care be provided to indigents . . . promptly and humanely.”<sup>37</sup> This means that cities and counties must provide medical care to the poor “at a level which does not lead to unnecessary suffering or endanger life and health.”<sup>38</sup> The California Supreme Court has held that municipalities must provide “subsistence medical services.”<sup>39</sup> Cities and counties have an obligation to provide ““medically

<sup>37</sup> *Tailfeather v. Board of Supervisors*, 48 Cal. App. 4th 1223, 1245 (1996).

<sup>38</sup> *Id.* at 1240.

<sup>39</sup> *Hunt v. Superior Court*, 21 Cal. 4th 984, 1014 (1999) (“Section 10000 imposes a minimum standard of care—one requiring that subsistence medical services be

necessary' care, not just emergency care."<sup>40</sup> Importantly, a city or county's obligation to provide medically necessary care must be fulfilled "without regard to its fiscal plight."<sup>41</sup> "Medically necessary" for adults is defined by statute:

"[A] service is 'medically necessary' or a 'medical necessity' when it is reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain."<sup>42</sup>

80. In view of the above-described facts and circumstances, and the significant studies, statistics, and reports including those set forth herein, and other such evidence as may be provided, a person's status as an unsheltered homeless individual both causes and exacerbates physical and mental health problems, ultimately causing much higher rates of infection, disease, decay, pain, and death.

81. Basic shelter is "medically necessary" because it is "reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain," and the City's failure to provide the same to its homeless population constitutes a breach of its duty under California Welfare & Institutions Code §§ 17000 & 10000.

82. Plaintiffs, and each of them, have been damaged by the City's failure to provide shelter, as described in detail herein.

---

provided promptly and humanely.").

<sup>40</sup> *County of Alameda v. State Bd. of Control*, 14 Cal. App. 4th 1096, 1108 (1993) (quoting *Bay Gen. Cmty. Hosp. v. County of San Diego*, 156 Cal. App. 3d 944, 957 (1984)).

<sup>41</sup> *Id.*

<sup>42</sup> California Welfare & Institutions Code § 14059.5(a).

83. Plaintiffs seek no monetary damages hereunder and submit this claim for only equitable and injunctive relief. Accordingly, the City is not entitled to any claim of immunity, pursuant to California Government Code § 814.

## TENTH CLAIM FOR RELIEF

### Deprivation of the Guarantee of Safety and the Pursuit of Happiness

#### Cal. Const. art. I § 1

#### (All Plaintiffs against Defendant)

84. Plaintiffs re-allege and incorporate herein by this reference each and every allegation set forth in Paragraphs 1 through 83 of this Complaint as though set forth fully herein.

85. California Constitution, article I § 1 provides:

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

86. The actions by the City have limited, damaged, and/or burdened plaintiffs' constitutionally guaranteed inalienable rights, including plaintiffs' rights to enjoy and defend their life and liberty; to acquire, possess, and protect their property; and to pursue and obtain safety, happiness, and privacy.<sup>43</sup> The same is

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<sup>43</sup> See generally Joseph R. Grodin, *Rediscovering the State Constitutional Right to Happiness and Safety*, 25 Hastings Const. L.Q. 1, 29 (1997) ("Either as an alternative or as an additional meaning, the happiness and safety clauses could be viewed as a declaration, and even a judicially enforceable one, that government has an affirmative obligation to provide at least the minimum conditions necessary for human happiness and safety. This would entail, arguably, the assurance of such things as minimal requirements for food, shelter, and medical care, and so far as



1 true of the tandem rights of their managers and tenants.

2 87. Plaintiffs seek no monetary damages hereunder and submit this claim  
3  
4 for only equitable and injunctive relief. Accordingly, the City is not entitled to any  
5 claim of immunity, pursuant to California Government Code § 814.

## 6 **ELEVENTH CLAIM FOR RELIEF**

### 7 **Inverse Condemnation**

### 8 **Cal. Const. art. I § 19**

### 9 **(All Plaintiffs against Defendant)**

10 88. Plaintiffs re-allege and incorporate herein by this reference each and  
11  
12 every allegation set forth in Paragraphs 1 through 87 of this Complaint as though  
13  
14 set forth fully herein.

15 89. California Constitution, article I § 19(a) provides in relevant part:

16  
17 Private property may be taken or damaged for a public use and  
18 only when just compensation, ascertained by a jury unless waived,  
19 has first been paid to, or into court for, the owner.

20 90. The actions by the City have limited, damaged, and/or burdened the  
21  
22 owners' property and/or business so substantially that they rise to the level of a  
23 regulatory taking, yet no compensation has been provided.

24 91. Plaintiffs seek no monetary damages hereunder and submit this claim  
25  
26 for only equitable and injunctive relief. Accordingly, the City is not entitled to any  
27 claim of immunity, pursuant to California Government Code § 814.

28 possible, a nondangerous environment.”).

## **COMPLAINT FOR INJUNCTIVE AND EQUITABLE RELIEF**

**VII. DEMAND FOR JUDGMENT**

WHEREFORE, Plaintiffs pray for judgment against Defendant, as follows:

1. Injunctive/equitable relief in a manner to be determined by law (e.g., an injunction commanding defendant to remove the tent encampment and ensure that The Alley and The Block are and remain free of any public and/or private nuisance on the streets and sidewalks);
2. An award of costs of suit, including attorneys' fees, as permitted by law and
3. Such other and further relief as this Court deems just and proper.

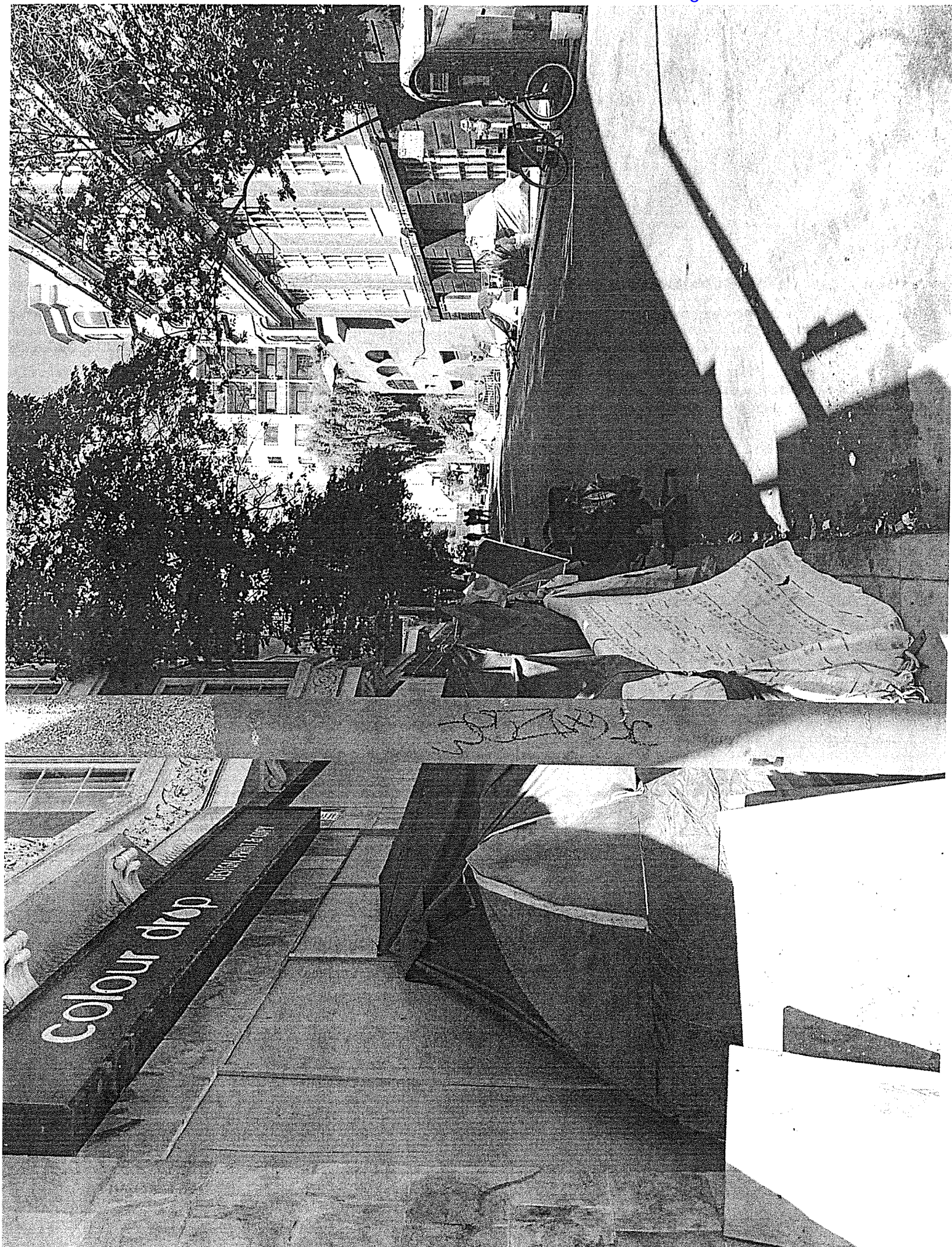
Dated: June 25, 2020

**DOWLING & MARQUEZ, LLP**

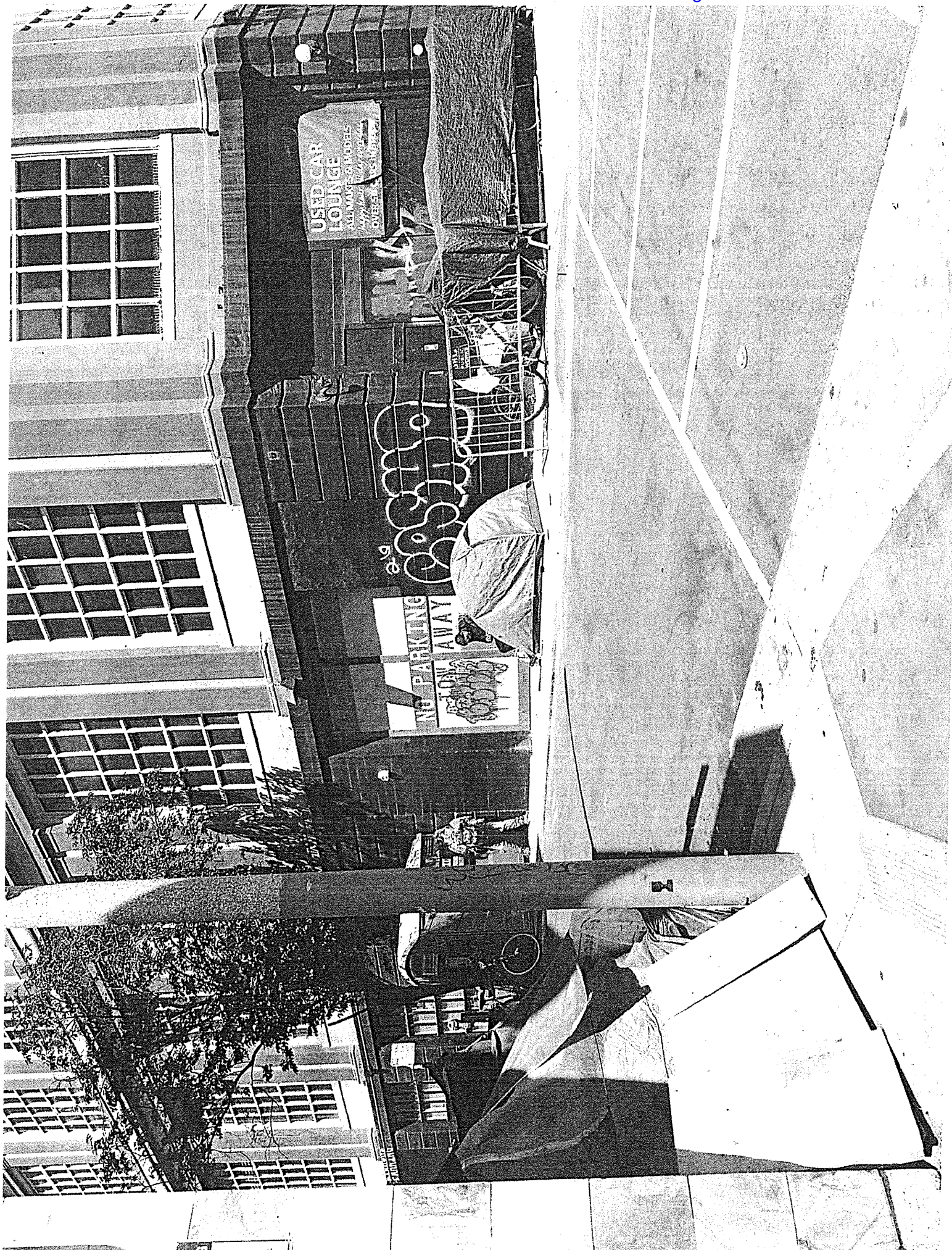
By: Curtis F. Dowling  
Attorneys for Plaintiffs  
DANIEL GIOSSO, JAMES  
GIOSSO, AND RICHARD  
GIOSSO, TRUSTEES OF THE  
GIOSSO CHILDREN'S TRUST &  
MIKE O'NEILL AND SONS, A  
CALIFORNIA GENERAL  
PARTNERSHIP

EXHIBIT “A”

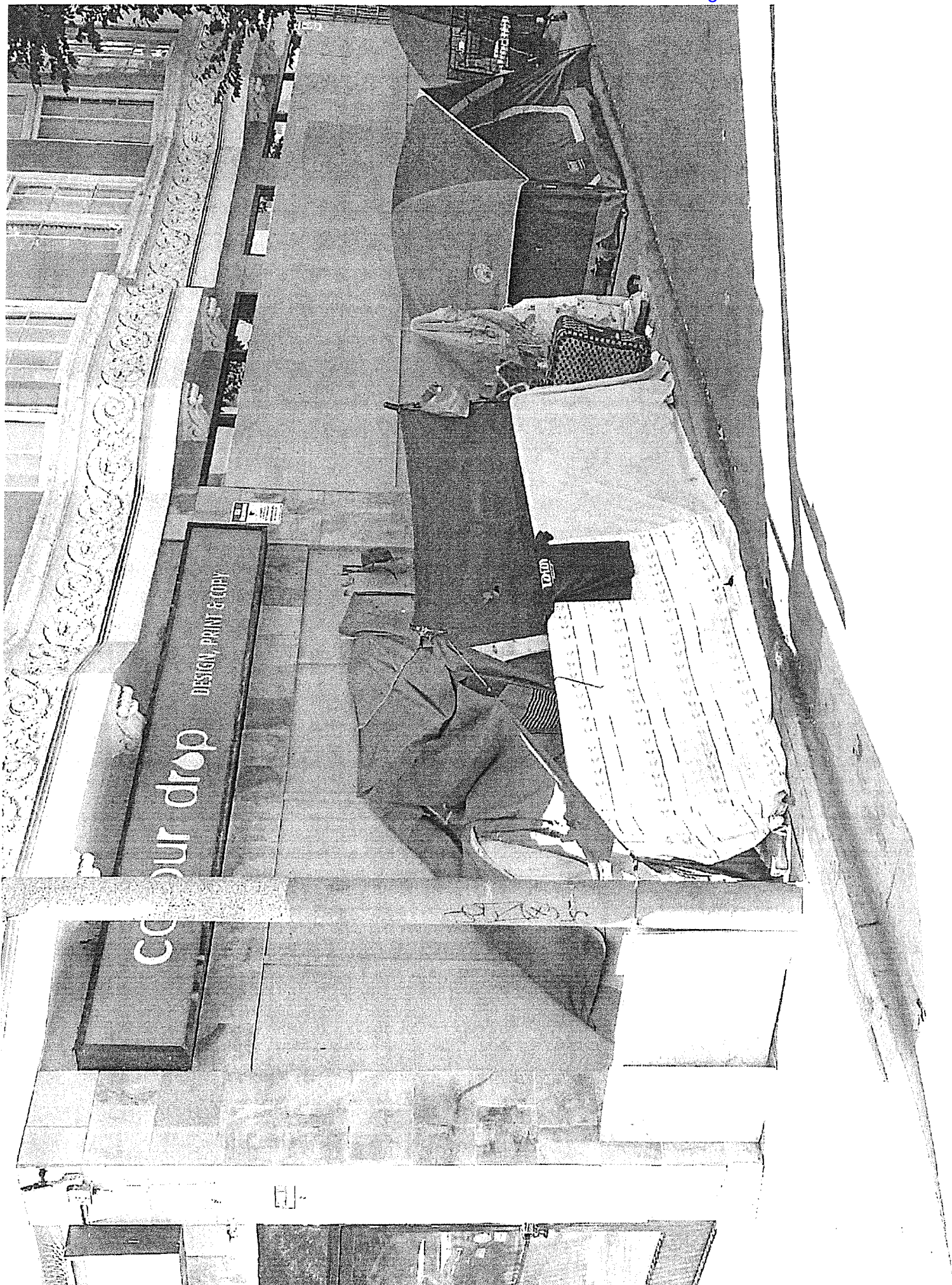




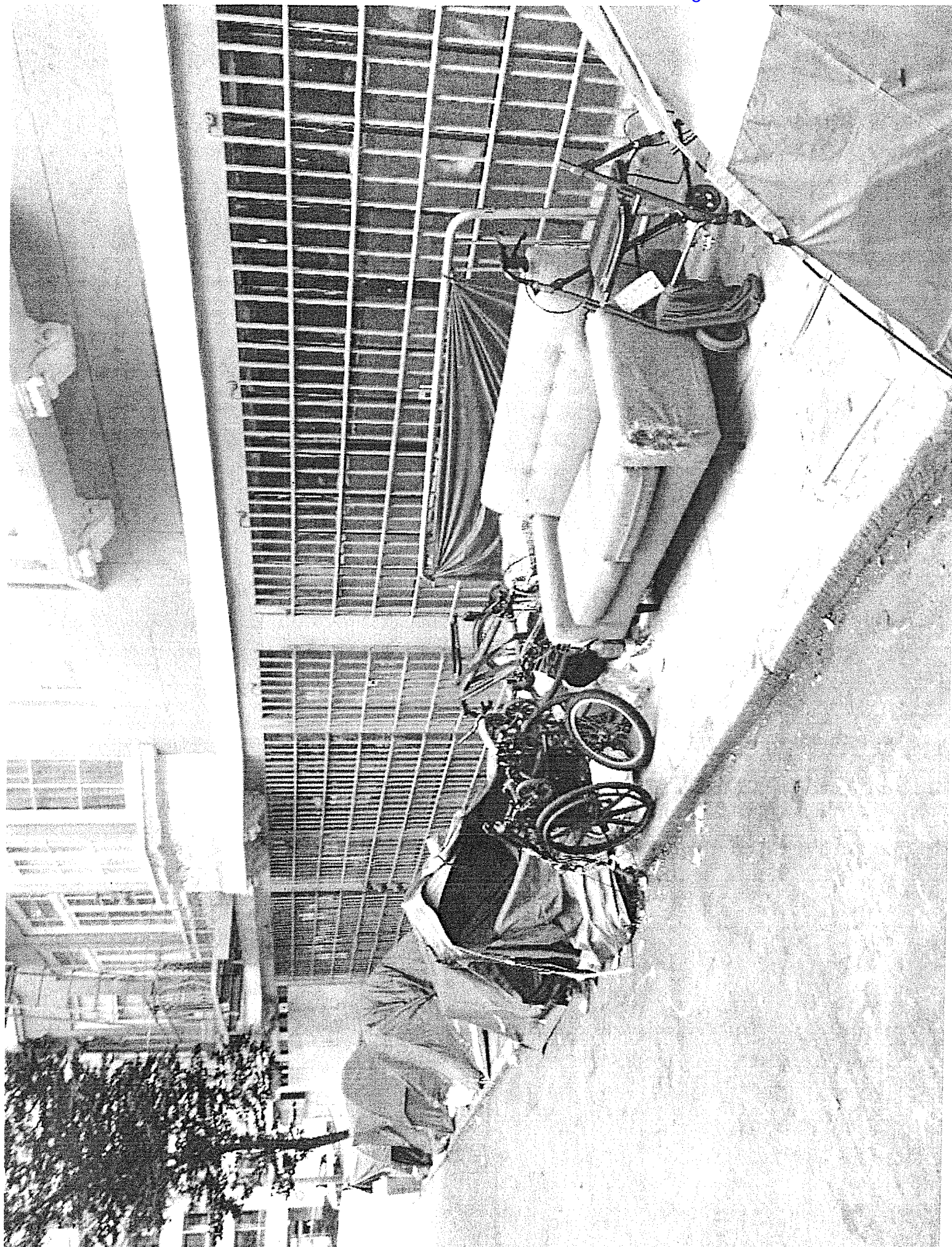




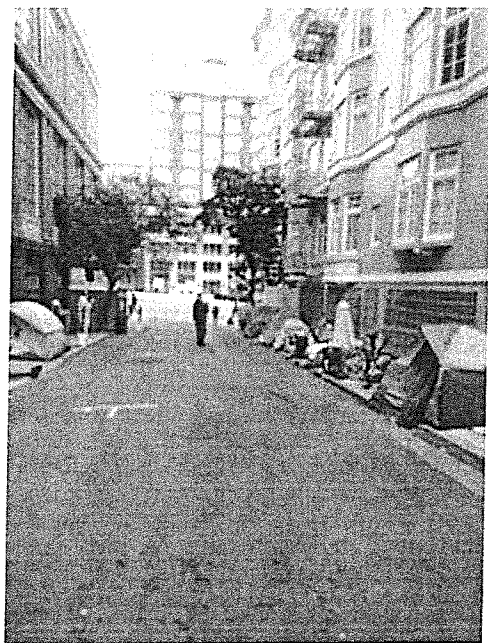






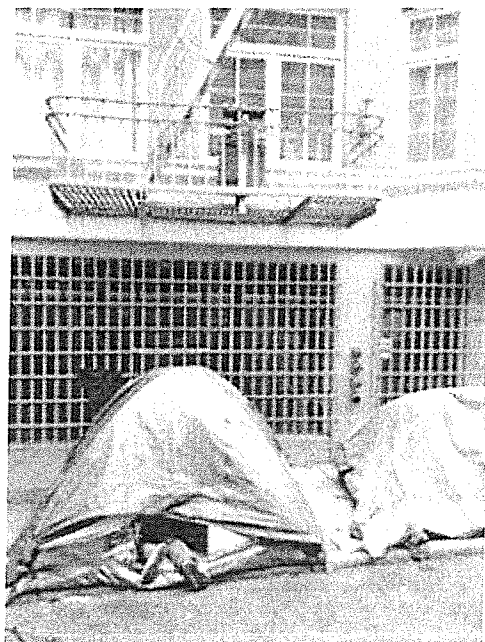












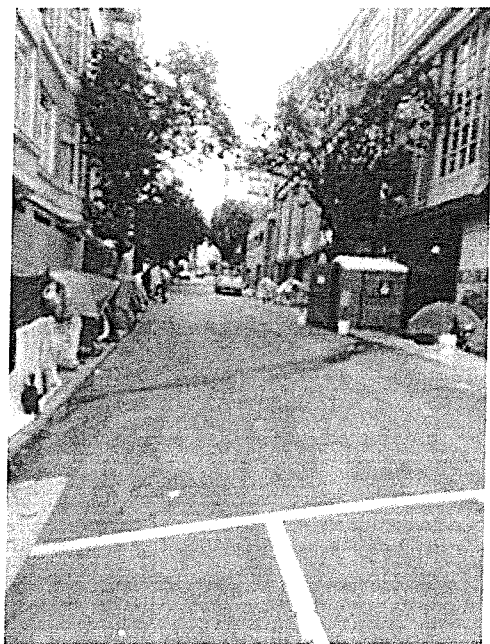




EXHIBIT “B”



# Tent and Makeshift Count

